

NEW DIGITAL TOOLS FOR ENFORCING MOBILE WORKERS' RIGHTS

Call for action

We represent workers in sectors, such as agriculture, construction, domestic work, food, homecare and social care, transport and tourism that to a large extent depend on mobile workers, with high levels of exploitation, fraud and other labour abuses.

To protect the rights of mobile workers and to tackle cross-border social fraud by companies we urgently call for new cross-border digital tools and enhanced coordination through national and European digital instruments. Cross-border enforcement is key – and it must go digital now!

The European Commission should use the planned initiative for a secure European e-ID to swiftly make legislative proposals in the following areas:

1. We urgently call on the European Commission to confirm and anticipate the launch of the European Social Security Pass (ESSP) and move this forward from 2023 to 2022. The ESSP should include a European Social Security Number (ESSN) for all workers in the EU to ease the portability of social security benefits and rights and the cross-border verification of social security coverage.
2. We urgently call for a European Personal Labour Card (EPLC) to be presented together with the ESSP and building on the ESSN and existing good practices in the Member States.
3. We call on the Member States to urgently finalise their national implementation of the European Exchange of Social Security Information (EESSI) and for the digitalisation of the Portable Document A1 (PDA1) in a fraud-proof application.
4. We call for digital prior notification without exceptions for the posting of workers. Prior notification schemes in the sending and receiving country must be digitally interconnected. To protect workers' rights in all situations, there should also be a digital prior notification for flexible workplaces (e.g. small construction sites, home care, etc.), for all contractors down the subcontracting chains, and to the worker about all applicable working conditions and collective agreements.

5. We call for the creation of a European business register to fight letterbox companies by creating transparency and facilitating the exchange and availability of company information at EU-level.
6. We call for EU legislation regulating labour intermediaries (recruitment and placement agencies, temporary work agencies etc.) more strictly, and banning them from the posting of workers in fraud sensitive sectors.
7. We call for a new EU directive setting minimum standards for labour inspections and complaint mechanisms based on ILO Convention No. 81

New digital tools for enforcing mobile workers' rights

The number of mobile workers in the EU, both EU citizens and third-country nationals, is steadily growing. Migrant, posted, and cross-border workers in the construction, transport, agri-food and hospitality industries are particularly vulnerable to rights violations, exploitation, and fraudulent schemes set up by companies. The growing activity of intermediaries (temporary work, recruitment, and placement agencies) as part of a business model based on wage and social security dumping (through the posting of workers or other strategies) is a particularly worrisome development that needs to be stopped.

The European Commission should use the initiative for a European e-ID to propose new digital tools for enforcing mobile workers' rights. Cross-border digital enforcement is key for the future EU labour market. The **European Labour Authority (ELA)** should play a major role in facilitating cross-border coordination and exchange of data.

Cross-border enforcement of rights and rules to combat exploitation and fraud in the construction, transport, home care and social care, agri-food and hospitality industries should **cover all companies, workers, and self-employed active on the EU labour market**, including companies and workers from third countries.

Digital enforcement can boost labour inspections and improve the effectiveness and efficiency of prior risk-assessments, collecting evidence, controls, and ensuring adequate sanctions. Competent national authorities must have the means to exchange information in real time. The dataflow must be coordinated at the EU-level and between all relevant institutions and competent compliance and enforcement authorities, including social security administrations and authorities responsible for labour inspections.

Digital European instruments must be developed without prejudice to the **autonomy of the social partners** and their right to negotiate and conclude collective agreements. Trade unions and employer

organisations must be directly involved, especially where they have regulatory responsibility in their respective sectors. The creation of joint (paritarian) institutions can be crucial to create a digital link between the social partners and public digital data tools.

Meta-data collection, processing, analysis, and use are important tools for the efficient control of workplaces, complex business models, workers' rights across supply and subcontracting chains, employers' obligations, self-employed and agencies. With the help of meta data, inspections can be better targeted while non-productive administrative burden is eliminated.

Privacy and personal data protection must always be guaranteed. Harmonised EU legislation must protect personal data while ensuring the trust between countries and institutions needed for a smooth data exchange. Authorities and inspectorates must have the necessary human (e.g. IT officers) and technical (e.g. devices, encryption systems etc.) resources, as well as training and regular advice on data protection, and handbooks on data exchange and GDPR rules.

Modern solutions such as blockchain technology provide opportunities for swift and protected cross-border systems for data exchange. Standardised Application Programming Interfaces (API)s can help to share data from existing national data bases in a GDPR compliant way. The approach of decentralised registers can ensure restricted governance of data while giving instant access to multiple data sets.

1. A European Social Security Number and Pass

We welcome the announced creation of a European Social Security Pass by 2023 to facilitate the interaction between mobile citizens and national authorities and improve the portability of social security rights across borders. The European Social Security Pass should include a European Social Security Number to facilitate the mobility of workers, supporting the portability of social security rights, the cross-border verification of social security coverage, and social security coordination.

We all have a unique IBAN banking number, but no European social security number (ESSN). National tax authorities have powers to collect unpaid taxes from another country, while for wages and social security possibilities are limited. This needs to change now: All national databases need a common unique identification key so they can exchange data in real-time in a protected environment.

Already in 2017, the European Commission and the European Parliament called for the creation of an ESSN, with strong data protection guarantees. An ESSN could improve the transnational coordination between national authorities for the protection and enforcement of workers' rights, by improving identification, traceability, and portability of social security benefits. An ESSN can build on the European Exchange of Social Security Information (EESSI – see below).

An ESSN should enable competent national authorities responsible for controls on social security and trade unions to fight social fraud in subcontracting chains, bogus self-employment, fake posting, letterbox companies, and non-payment of social security contributions. Tackling social fraud in this way also protects the sustainability of national social security systems.

We underline that digital verification of a worker's social security insurance coverage reduces administrative burden on workers, companies, and administrations.

2. A European Personal Labour Card

We call for a European Personal Labour Card (EPLC) for all EU citizens and third-country nationals active on the labour market. With the European Health Insurance Card¹ as a basic concept, European Institutions do not have to start from scratch. It can be integrated into one system with the ESSN, the ESSP, the Exchange of Social Security Information (EESSI – see below), and the future European E-ID. Thus, the EPLC should be presented together with the ESSP/ESSN.

An EPLC for workers would facilitate controls at the workplace and improve companies' compliance with social regulations and workers' rights. An effective control always starts with the registration of the worker and his/her employment and social status, followed by a digital verification in employment and social databases. Therefore, the card should contain information about the bearer and the employment relationship, including:

- A European ESSN with an electronic chip to connect the card to relevant database(s);
- The employer;
- The workplace;
- The working period and contractual relationships;
- Social security coverage;
- Relevant insurance information;
- Information on certificates;
- Tax information.

The EPLC card should not replace well-functioning social ID-cards that exist today. Currently, there are different forms of social identity cards developed by the national social partners in the construction sector, such as the Finnish [Valtti-card](#), the Belgium: [construbadge](#), the Spanish [Professional card TPC](#), the Italian [DURC](#), the Norwegian [Jobbkort](#). The European initiative should use national, local, sectoral, and European experiences. Sectoral, national and European social partners should be involved in the design and management of the EPLC, with due regard to national law and practices.

¹ <https://ec.europa.eu/social/main.jsp?catId=559>

The EPLC could be integrated in systems to monitor working time. The European Court of Justice has ruled that the Member States should oblige employers to set up a system for recording daily working time to check whether the maximum weekly, the minimum daily, and the weekly rest time have been observed.

3. Electronic Exchange of Social Security Information (EESSI) and digital documents

The Electronic Exchange of Social Security Information (EESSI) is an IT system that helps social security institutions across the EU to exchange information on mobile citizens' claims relating, for instance, to sickness, pensions, unemployment, or family benefits. Unfortunately, still not all Member States have finalised the national implementation of EESSI.

The EESSI would have significant added value when it would be used as a basis for other applications:

- As the basis for an ESSN, EESP, and the EPLC;
- When it is connected to other databases (such as the national databases of the host countries in the context of the posting of workers).
- For mandatory prior notification and digital PDA1s for the posting of workers under the Coordination of Social Security Regulation 883/2004;

The Portable Document A1 (PDA1) indicates a person's affiliation to a social security system when a worker crosses a border to work in another Member State. The PDA1 is still used in a paper format – a practice which is far outdated. There are numerous cases of missing, incomplete, or fraudulent PDA1s. The transition to a digital PDA1 is an urgent matter! It should be connected to the EESSI and soon be replaced by an ESSN and EPLC. For posted workers, the digital PDA1 must be issued only on the basis of a prior notification.

4. Digital prior notification

Prior notification of cross-border posting

For the posting of workers, prior notification schemes make sure that competent authorities are informed about a worker or self-employed person sent to work in another Member State before the start of the activity. In fraud sensitive sectors, such as agriculture, construction, domestic work, food, homecare and social care, transport and tourism there must be no exemptions of any kind from prior notification.

There is a prior notification to the authorities of the sending state for social security coordination (Regulation 883/2004), a precondition for the issuance of the PDA1 form. Furthermore, there are prior notification systems in receiving states mostly for labour law purposes (Directive 2014/67).

In the future, home country and host country prior notification should be:

- Easy to apply (e.g. via an APP on a mobile phone);
- Applicable for all works regardless of the employment status and duration of the assignment;
- Applicable for both posted workers to one country and for those employed in two or more countries;
- Without exemptions, especially in fraud sensitive sectors;
- Interconnecting home country (social security) and host country (working conditions, wages) schemes;
- Integrated into the new EESSI, ESSN, ESSP, and EPLC system.

Prior notification of flexible workplaces

It is typical for many sectors that we represent that workplaces are not always clearly visible or identified. This makes the enforcement of workers' rights and inspections difficult. A mandatory prior notification of those workplaces would support labour rights and avoid the need for enforcement authorities to search for work sites randomly to control them. The prior notification should include estimated production volumes and a declaration on the labour force, to tackle social benefit fraud and undeclared work. When major disparities exist, competent authorities can intervene.

Prior notification of subcontractors in the supply chain

Several of the sectors we represent are characterised by long and untransparent chains of subcontractors. Creating transparency is of paramount importance to ensure that all subcontractors are clearly identified and abide to the law and collective agreements. A digital prior notification system in which the main contractor reports all the subcontractors in the chain to the competent authority would create transparency and accountability. This prior notification must provide information of the company, the service or work delivered, and the involved workers.

Prior notification of working conditions to the worker

Employers are obliged to inform workers of essential aspects of the employment relationship in advance, such as the identity of the parties, the place of work, remuneration, and social security status. Turning to a union for help or filing a complaint with the enforcement authorities is only possible for an informed worker. The Transparent and Predictable Working Conditions Directive 2019/1152 makes a step in this direction. All information should be reported to and made available in the new digital ESSN and EPLC system to protect the worker and give full transparency of his or her working conditions.

5. Towards a uniform European Business Registry (EBR)

Today, a company can be set up and registered in any Member State and provide its services in another Member State. In a cross-border situation, the controls about the company's actual existence and real seat can be extremely complicated. This is an invitation to set up letterbox companies, which are established and dismantled in the blink of an eye. The checks enabled by the Internal Market Information System (IMI) can yield useful information. But this is not enough. There should be an adequate level of transparency from the outset and the 'real seat principle' must apply. For this, we call for the creation of a European Business Registry (EBR) to create transparency and facilitate the exchange and availability of company information at EU-level, including intermediaries such as temporary work, placement, and recruitment agencies. The EBR should be embedded in the IMI and the single digital gateway and at least contain the following information:

- The company's founders and owners;
- The company's legal representatives;
- The company's real seat;
- The company's initial capital;
- The company's business activities;
- The company's VAT number;
- The required certifications and certificates;
- The number and the identity of the workers.

6. Regulating labour intermediaries

Labour intermediaries such as recruitment, placement, and temporary work agencies operating in the internal market should be strictly regulated by EU legislation. Their operations should be recorded in a European register and become more transparent. They should be obliged to comply with strong minimum requirements and quality standards. Recruiting costs as well as travel expenses must be entirely borne by employers. Recruiting and placement agencies must provide reliable information to workers about their labour, social, and civil rights in the country in which they work. Because of the unacceptably high risk of exploitative practices, intermediaries must be banned from the posting of workers in all fraud sensitive sectors.

7. Effective labour inspections and complaint mechanisms

New digital enforcement technology can only be effective if independent enforcement authorities are equipped with the necessary competences and resources to carry out inspections on social security and other working and employment conditions. These authorities in the EU are currently understaffed and inspections happen too scarcely. Sanctions are neither effective nor dissuasive.

We call for a new EU directive setting minimum standards for labour inspections based on ILO Convention No. 81. It should cover the basic functioning, minimum resources, and minimum number of labour inspectors and of inspections carried out. It should set minimum standards for powers and obligations of inspectorates, without interfering into the basic principles of national systems and the autonomy of the social partners. The directive should cover both national and cross-border situations, further empower the ELA, and cover elements such as entry to workplaces without prior notice, examinations, interrogations with workers and employers, and (digital) access to documents. The Directive should also aim at strengthening digital data exchange and cross-checking between enforcement authorities responsible for inspections in different areas such as working conditions, occupational health and safety, social security, taxation, and housing conditions. The initiative must respect the autonomy of social partners when they are entrusted with the control and enforcement of wages and other working conditions. It should also aim at improving coordination between authorities dealing with different types of inspections (e.g. housing, pay, working time, social security, undeclared work). Finally, it should allow victims as well as third parties, including trade unions, to file complaints addressing practical barriers that make complaints mechanisms ineffective or inaccessible, in particular for mobile and migrant workers.